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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 HUGO HERNANDEZ-CHOLALPAN,

10 Petitioner,

11 v.

12 DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Case No. C14-496-MJP-BAT

**REPORT AND  
RECOMMENDATION**

13 **BACKGROUND AND DISCUSSION**

14 Petitioner Hugo Hernandez-Cholalpan is a native and citizen of Mexico, who has been  
15 detained at the Northwest Detention Center since September 9, 2013. On April 4, 2014, he filed  
16 a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking a bond hearing  
17 and release on bond. Dkt. 1. Respondent Department of Homeland Security (“DHS”) has  
18 moved to dismiss, arguing that Mr. Hernandez-Cholalpan’s petition is moot because Immigration  
19 and Customs Enforcement (“ICE”) has since determined that he is entitled to be released upon  
20 posting a \$20,000 bond. Dkt. 6. DHS indicates that although Mr. Hernandez-Cholalpan has not  
21 yet posted bond, he acknowledged receipt of the bond determination and did not request review  
22 of that determination by an Immigration Judge (“IJ”). *See* Dkt. 6-1. Mr. Hernandez-Cholalpan  
23 did not respond to the motion to dismiss.

1 The Court agrees with DHS that Mr. Hernandez-Cholalpan's request for release on bond  
 2 is moot. Under Article III of the U.S. Constitution, federal courts may adjudicate only actual,  
 3 ongoing cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). Because Mr.  
 4 Hernandez-Cholalpan has already been granted the ultimate relief sought—an order allowing his  
 5 release on bond—his claim is now moot. *See Abdala v. I.N.S.*, 488 F.3d 1061, 1065 (9th Cir.  
 6 2007) (claims are moot where court cannot provide the requested relief).

7 The fact that Mr. Hernandez-Cholalpan did not receive the requested bond hearing before  
 8 an IJ does not change the Court's determination. As noted by DHS, Mr. Hernandez-Cholalpan  
 9 did not request review of ICE's bond determination by an IJ. *See* Dkt. 6-1. Therefore, he has  
 10 not exhausted his administrative remedies. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th  
 11 Cir. 2011) (district court should dismiss § 2241 petition without prejudice where petitioner fails  
 12 to exhaust prudentially required administrative remedies and exhaustion is not waived).

### 13 CONCLUSION

14 Based on the foregoing, the Court recommends that DHS's motion to dismiss, Dkt. 6, be  
 15 GRANTED, Mr. Hernandez-Cholalpan's habeas petition be DENIED, and this action be  
 16 DISMISSED without prejudice. A proposed order accompanies this Report and  
 17 Recommendation.

### 18 OBJECTIONS AND APPEAL

19 This Report and Recommendation is not an appealable order. Therefore a notice of  
 20 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the  
 21 assigned District Judge enters a judgment in the case. Objections, however, may be filed and  
 22 served upon all parties no later than **July 7, 2014**. The Clerk should note the matter for **July 11,**  
 23 **2014**, as ready for the District Judge's consideration if no objection is filed. If objections are

1 filed, any response is due within 14 days after being served with the objections. A party filing an  
2 objection must note the matter for the Court's consideration 14 days from the date the objection  
3 is filed and served. The matter will then be ready for the Court's consideration on the date the  
4 response is due. Objections and responses shall not exceed eight (8) pages. The failure to timely  
5 object may affect the right to appeal.

6 DATED this 16th day of June, 2014.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge